

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

**Eduardo Rivero,**

**Civil No. 10-CV-3045 (SRN/JJK)**

**Petitioner,**

**ORDER**

**v.**

**Scott P. Fisher,**

**Respondent.**

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Eduardo Rivero, FCI-Sandstone, P.O. Box 1000, Sandstone, Minnesota 55072, pro se.

Ana H. Voss, Assistant United States Attorney, 600 U.S. Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota 55415, for Respondent.

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SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Jeffrey J. Keyes dated February 18, 2011 [Doc. No. 10]. Petitioner filed timely objections to the R&R [Doc. No. 11].

According to statute, the Court must conduct a de novo review of any portion of the Magistrate Judge’s opinion to which specific objections are made. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b). Based on that de novo review, the Court adopts the R&R.

The R&R recommended denial of this § 2241 habeas corpus petition and dismissal of the action without prejudice because Petitioner failed to exhaust his administrative remedies. Petitioner does not dispute that he did not exhaust his administrative remedies. He alleges, however, that he requested that the Bureau of Prisons provide him with the appropriate form to

appeal the Discipline Hearing Officer's decision, but that prison staff refused his request. Thus, he contends that he should be excused from the exhaustion-of-remedies requirement.

Petitioner could have filed an appeal without the Bureau of Prisons form. In addition, he acknowledges that the refusal to provide him with a form should be considered a denial of his appeal, allowing him "to proceed to the next step." (Objections at 2 [Doc. No. 11].) Because the appeals process is a three-tiered process, Petitioner's next step was an appeal to the Central Office. (R&R at 5 (citing 28 C.F.R. § 542.15) [Doc. No. 10].) Contrary to his assertions, the next step was not filing the instant Petition.

As the R&R cogently discussed, the policy under which Petitioner was disciplined is a new one. (*Id.* at 8.) Thus, it is important for the Bureau to have the opportunity to make an initial determination on Petitioner's claims. In addition, the R&R recommended denial of the Petition without prejudice. Should Petitioner be dissatisfied with the outcome of his administrative appeal, he is not foreclosed from seeking review of that outcome in this Court.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Magistrate Judge Keyes's Report and Recommendation (Doc. No. 10) is **ADOPTED**;
2. The petition for a writ of habeas corpus (Doc. No. 1) is **DENIED**; and
3. This action is **DISMISSED without prejudice**.

Dated: March 31, 2011

s/Susan Richard Nelson  
SUSAN RICHARD NELSON  
United States District Judge